



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK**

**Lisa M. Thomas  
140 Main St.**

**Marlborough, MA 01752  
(508) 460-3775 FAX (508) 460-3723**

**DECEMBER 16, 2013**

Regular meeting of the City Council held on Monday, December 16, 2013 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Pope, Ossing, Oram, Robey, Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, and Landers. Meeting adjourned at 9:35 PM.

President Pope recognized the following Marlborough residents who were in attendance at the Purple Heart Ceremony held earlier in City Hall: Usy Comier, Jerry Elliott, Ross Flagg, Ed Jolley, Henry Marchant, Louis Monti, and Jim Winbush.

ORDERED: That the minutes of the City Council Meeting DECEMBER 2, 2013, **FILE**; adopted.

ORDERED: That there being no objection thereto set **Monday, January 13, 2014** as date for a **PUBLIC HEARING** on the Application for Special Permit from Attorney Bergeron on behalf of Sandra & Anthony Antico Real Estate LLC and Sky Studios, Inc. to open commercial recreation establishment at the property, specifically an exercise and fitness facility at 289 Elm Street, refer to **URBAN AFFAIRS COMMITTEE AND ADVERTISE**; adopted.

ORDERED: That the Communication from Attorney Bergeron of Sandra & Anthony Antico Real Estate LLC and Sky Studios, Inc. requesting to extend Time Limitations for a Public Hearing on to February 1, 2014 on the Application for Special Permit, to open commercial recreation establishment at the property, specifically an exercise and fitness facility at 289 Elm Street, **FILE**; adopted

ORDERED: That Communication from the Mayor re: Employee Recognition of Mr. Harry Butland, Jr. as a recipient of the 2013 Regional Wastewater Treatment Plant Operator Excellence Award, **FILE**; adopted.

ORDERED: That the Veteran Service's transfer request in the amount of \$75,000.00 which moves funds from Undesignated to Veterans Benefits due to a rise in demand for benefits afforded to eligible veterans and their families, **APPROVED**; adopted.

FROM:

Acct. # 10000-35900

\$75,000.00

Undesignated Fund

TO:

Acct. # 1543006-57710

\$75,000.00

Veterans Benefits

ORDERED: That the Legal Department transfer request in the amount of \$75,000.00 from Undesignated to Legal Services to fund anticipated legal expenses for the remainder of the fiscal year, refer to **FINANCE COMMITTEE AND CARRY OVER TO 2014**; adopted.

FROM:

Acct. # 10000-35900 \$75,000.00  
Undesignated Funds

TO:

Acct. # 11510004-53110 \$75,000.00  
Legal Services

ORDERED: That the IT/Building Department transfer request in the amount of \$27,000.00 which moves funds from Undesignated to Computer Software due to an increase in the size of building permits and said funds budgeted for use of GeoTMS software, refer to **FINANCE COMMITTEE AND CARRY OVER TO 2014**; adopted.

FROM:

Acct. # 10000-35900 \$27,000.00  
Undesignated Funds

TO:

Acct. # 11550004-52541 \$27,000.00  
Maint/Computer Software

ORDERED: That the Building Department transfer requests totaling \$17,500.00 for various reasons as noted on the attached spreadsheet, refer to **FINANCE COMMITTEE AND CARRY OVER TO 2014**; adopted.

BUDGET TRANSFERS --										
	DEPT:	Inspectional Services					FISCAL YEAR:	2014		
		FROM ACCOUNT:					TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance	
\$17,000.00	\$17,000.00	83600	32703	Stabilizaiton - Bldg Dept	\$7,650.00	12410001	50260	Assistant Bldg Inspector	\$61,518.94	
	Reason:	To offset additional costs & promote timely inspections					To ensure adequate funding through FY14			
\$500.00	\$500.00	83600	32717	Stabilizaiton - Bldg Dept	\$6,850.00	12410001	50380	Electrical Inspector	\$13,285.43	
	Reason:	To offset additional costs & promote timely inspections					To ensure adequate funding through FY14 and to account for pending salary ordinance amendments			
					\$3,000.00	12410001	50960	Assistant Plumbing Inspector	\$356.88	
	Reason:						To ensure adequate funding through FY14 and to account for pending salary ordinance amendments			
	Reason:									
					\$17,500.00					
		Total			\$17,500.00	Total				

ORDERED: That the Council on Aging transfer request in the amount of \$308.64 which moves funds from Principal Clerk to Social Services Coordinator correcting a 2% COLA increase, **APPROVED**; adopted.

FROM:

Acct. # 15410002-50520 \$308.64  
Principal Clerk

TO:

Acct. # 15410001-50996 \$308.64  
Social Services Coordinator

ORDERED: That the Council on Aging Gift Acceptance in the amount of \$20,000.00 to be utilized for services and programs provided by the Council on Aging, **APPROVED**; adopted.

ORDERED: That the Communication from the Mayor re: Municipal Sewer Tie-In Requests pertinent to Sudbury and Berlin, refer to **OPERATIONS AND OVERSIGHT COMMITTEE AND CARRY OVER TO 2014**; adopted

ORDERED: That the reaffirmation of the vote taken on December 2, 2013 to Offset the Tax Levy by transferring \$30,275.00 from the Sale of Graves, \$368,714.86 from Aquifer Protection and \$2,000,000.00 in Undesignated Free Cash AND further approve the FY2014 Residential Factor of .79911 with a Corresponding CIP Shift of 1.40 and Board of Assessor's recommendation of a FY2014 Residential Property Tax Levy of 53.21% (Residential Property Valuation 66.57% of total valuation) and Commercial, Industrial and Personal Property FY2014 Tax Levy of 46.79% (CIP Valuation 33.43% of total valuation), **APPROVED**; adopted.

**Councilor Oram requested to be recorded in opposition to the Corresponding CIP Shift of 1.40.**

**Yea: 11 – Nay: 0**

**Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Oram, & Robey**

ORDERED: That the Communication from City Solicitor Rider re: Special Permit, Jump In with Us, 19 Brigham St., Unit 6, in proper legal form, Order No. 13-1005482C, **MOVED TO ITEM 24**; adopted.

ORDERED: That the Department of Public Works be authorized to plow and remove snow from the following ways, in accordance with the provisions of Massachusetts General Law Chapter 40, Section 6-C, provided, that said way be of such construction and condition that, in the opinion of the Commissioner of Public Works, said plowing can be safely and conveniently accomplished, **APPROVED**; adopted

Nolan Way Mauro Farms Subdivision, off Cook Lane  
Spenser Circle Mauro Farms Subdivision, off Nolan Way

**Yea: 11 – Nay: 0**

**Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Oram, & Robey**

ORDERED: That the Communication from Mass Development re: Final Approval to a Revenue Bond Project to be Financed on Behalf of Partners Healthcare System, Inc., **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, November 18, 2013, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, October 22, 2013, **FILE**; adopted.

ORDERED: That the Communication from Hanover Insurance Group on behalf of Hillside School Inc., 404 Robin Hill St., refer to the **LEGAL DEPARTMENT**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- A. Lynn Hubbard, 149 Main St., Apt 11, other property damage and/or personal injury
- B. Betsy Kirschbaum, 699 Hemenway St., pothole or other road defect claim
- C. Leslee Halleran, 16 Old Forge Ln., Sudbury, pothole or other road defect claim
- D. Stephen Bertulli, 182 White Pond Rd., Hudson, pothole or other road defect claim
- E. Keith Marhafer, 87 Teele Rd., Bolton, pothole or other road defect claim

**Suspension of the Rules requested – granted**

ORDERED: That the MMEA Contract Transfer request to fund the recently ratified collective bargaining contract between the City of Marlborough and the Marlborough Municipal Employees Association (MMEA) for FY 2013, 2014, and 2015, refer to **FINANCE COMMITTEE AND CARRY OVER TO 2014.**

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
DEPT:					FISCAL YEAR:				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$460,696	\$133,345	11990006	57820	Reserve for Salaries	\$5,285	11330002	50062	Finance Assistant	\$64,418
	Reason:							Contractual Increase	
					\$2,185	11350002	50062	Finance Assistant	\$30,390
	Reason:							Contractual Increase	
					\$2,090	11350002	50550	Head Clerk	\$27,716
	Reason:							Contractual Increase	
					\$925	11350002	50770	Senior Clerk	\$10,555
	Reason:							Contractual Increase	
					\$2,925	11410002	50550	Head Clerk	\$23,328
	Reason:							Contractual Increase	
					\$2,480	11410002	50770	Senior Clerk	\$27,771
	Reason:							Contractual Increase	
					\$4,955	11440002	50770	Senior Clerk	\$45,883
	Reason:							Contractual Increase	
					\$2,285	11550001	50210	Senior System Analyst	\$33,039
	Reason:							Contractual Increase	
					\$2,570	11550001	50213	Network Engineer	\$42,983
	Reason:							Contractual Increase	

						\$2,540	11610002	50770	Senior Clerk		\$21,372
	Reason:						Contractual Increase				
						\$2,120	11620002	50141	Clerk		\$8,184
	Reason:						Contractual Increase				
						\$1,940	11620002	50520	Principal Clerk		\$23,728
	Reason:						Contractual Increase				
						\$8,055	11920001	50292	Bldg Maint. Craftsman		\$102,814
	Reason:						Contractual Increase				
						\$2,130	11920001	50385	Electrician		\$28,826
	Reason:						Contractual Increase				
						\$1,975	11920002	50520	Principal Clerk		\$12,316
	Reason:						Contractual Increase				
						\$5,145	11920003	50560	Custodian		\$89,656
	Reason:						Contractual Increase				
						\$1,940	12100002	50520	Principal Clerk		\$24,271
	Reason:						Contractual Increase				
						\$1,845	12100002	50770	Senior Clerk		\$21,107
	Reason:						Contractual Increase				
						\$2,030	12100003	50540	Chief Dispatcher		\$27,009
	Reason:						Contractual Increase				
						\$15,200	12100003	51213	Public Safety Dispatcher		\$204,842
	Reason:						Contractual Increase				
						\$2,110	12100003	51214	Public Safety Admin Asst.		\$29,323
	Reason:						Contractual Increase				
						\$2,150	12200002	51214	Public Safety Admin Asst.		\$29,362
	Reason:						Contractual Increase				
						\$5,235	12410001	50260	Asst Bldg Inspector		\$61,519
	Reason:						Contractual Increase				
						\$2,285	12410001	50370	Plumbing Inspector		\$33,038
	Reason:						Contractual Increase				
						\$7,160	12410002	50770	Senior Clerk		\$74,943
	Reason:						Contractual Increase				
						\$1,975	14001002	50520	Principal Clerk		\$24,631
	Reason:						Contractual Increase				
						\$2,090	14001002	50550	Head Clerk		\$27,716
	Reason:						Contractual Increase				
						\$1,845	14001002	50770	Senior Clerk		\$21,108
	Reason:						Contractual Increase				
						\$1,975	61090002	50520	Principal Clerk		\$24,631
	Reason:						Contractual Increase				

						\$2,110	14920001	50166	Recreation Program Mngr.	\$28,324
	Reason:						Contractual Increase			
						\$1,845	14920002	50770	Senior Clerk	\$21,107
	Reason:						Contractual Increase			
						\$2,020	15120001	50611	Assistant Sanitarian	\$25,857
	Reason:						Contractual Increase			
						\$1,845	15120002	50770	Senior Clerk	\$21,107
	Reason:						Contractual Increase			
						\$1,905	15410001	50312	Outreach Worker	\$23,485
	Reason:						Contractual Increase			
						\$2,805	16100001	50470	Children's Librarian	\$24,451
	Reason:						Contractual Increase			
						\$1,975	16100001	50471	Young Adult Librarian	\$24,665
	Reason:						Contractual Increase			
						\$1,975	16100001	50480	Cataloguer	\$24,631
	Reason:						Contractual Increase			
						\$2,090	16100001	50656	Head of Circulation	\$27,715
	Reason:						Contractual Increase			
						\$1,975	16100002	50520	Principal Clerk	\$24,631
	Reason:						Contractual Increase			
						\$3,680	16100003	50490	Library Staff	\$42,214
	Reason:						Contractual Increase			
						\$1,630	16100003	50860	Clerk	\$15,335
	Reason:						Contractual Increase			
						\$10,045	16100003	51261	Library Staff Assistant	\$89,813
	Reason:						Contractual Increase			

ORDERED: That the Comptroller's Office transfer request in the amount of \$1,800.00 from Finance Assistant to Longevity to fund the longevity payment associated with the transfer of a School Department employee to the Comptroller's Office, **APPROVED**; adopted.

FROM:

Acct. # 11330002-50062 \$1,800.00  
 Finance Assistant

TO:

Acct. # 11330003-51430 \$1,800.00  
 Sick Longevity

**ORDERED:** That the following transfer requests to fund the contractual obligations associated with the recently signed contract between the Department of Public Works Engineers Local 176 and the City **APPROVED;** adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:					FISCAL YEAR:				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$240,170.00	\$2,498	11990006	57820	Reserve for Salaries	\$2,498	14001101	50108	GIS Administrator	\$44,956
	Reason:					Contractual Increase			
\$240,170.00	\$2,838	11990006	57820	Reserve for Salaries	\$2,838	14001101	50660	Assistant City Engineer	\$53,453
	Reason:					Contractual Increase			
\$240,170.00	\$3,577	11990006	57820	Reserve for Salaries	\$3,577	14001101	50700	Senior Engineering Aide	\$67,418
	Reason:					Contractual Increase			
\$240,170.00	\$2,576	11990006	57820	Reserve for Salaries	\$2,576	14001101	50705	Assistant Civil Engineer	\$47,726
	Reason:					Contractual Increase			
\$240,170.00	\$7,313	11990006	57820	Reserve for Salaries	\$7,313	14001101	50710	Junior Civil Engineer	\$125,621
	Reason:					Contractual Increase			
	\$18,802	Total			\$18,802	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:					FISCAL YEAR:				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$240,170.00	\$1,233	11990006	57820	Reserve for Salaries	\$1,233	14001103	51430	Longevity Pay	\$8,318
	Reason:					Contractual Increase			
\$240,170.00	\$443	11990006	57820	Reserve for Salaries	\$443	14001103	51920	Sick Leave Buyback	\$11,063
	Reason:					Contractual Increase			
\$240,170.00	\$2,838	11990006	57820	Reserve for Salaries	\$2,838	14001301	50660	Assistant City Engineer	\$53,453
	Reason:					Contractual Increase			
\$240,170.00	\$3,215	11990006	57820	Reserve for Salaries	\$3,215	14001303	51430	Longevity Pay	\$50,812
	Reason:					Contractual Increase			
\$240,170.00	\$126	11990006	57820	Reserve for Salaries	\$126	14001303	51920	Sick Leave Buyback	\$34,707
	Reason:					Contractual Increase			
	\$7,855	Total			\$7,855	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:					FISCAL YEAR:				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$240,170.00	\$2,838	11990006	57820	Reserve for Salaries	\$2,838	14001401	50692	Supt. Of Auto Maintenance	\$53,453
	Reason:					Contractual Increase			
\$240,170.00	\$89	11990006	57820	Reserve for Salaries	\$89	14001403	51430	Longevity Pay	\$2,204
	Reason:					Contractual Increase			
\$240,170.00	\$126	11990006	57820	Reserve for Salaries	\$126	14001403	51920	Sick Leave Buyback	\$3,145
	Reason:					Contractual Increase			
\$240,170.00	\$2,838	11990006	57820	Reserve for Salaries	\$2,838	14001501	50680	General Foreman	\$53,453
	Reason:					Contractual Increase			
\$240,170.00	\$158	11990006	57820	Reserve for Salaries	\$158	14001503	51430	Longevity Pay	\$31,123
	Reason:					Contractual Increase			
	\$6,049	Total			\$6,049	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:					FISCAL YEAR:				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$240,170.00	\$126	11990006	57820	Reserve for Salaries	\$126	14001503	51920	Sick Leave Buyback	\$14,760
	Reason:					Contractual Increase			
\$240,170.00	\$2,796	11990006	57820	Reserve for Salaries	\$2,796	60080001	50570	Chemist	\$43,424
	Reason:					Contractual Increase			
\$240,170.00	\$2,024	11990006	57820	Reserve for Salaries	\$2,024	60080001	50580	Assistant Chemist	\$33,096
	Reason:					Contractual Increase			
\$240,170.00	\$2,498	11990006	57820	Reserve for Salaries	\$2,498	60081001	50910	Head Treatment Pl. Op	\$46,838
	Reason:					Contractual Increase			
\$240,170.00	\$305	11990006	57820	Reserve for Salaries	\$305	60081003	51430	Longevity Pay	\$6,492
	Reason:					Contractual Increase			
	\$7,749	Total			\$7,749	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:					FISCAL YEAR:				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$240,170.00	\$2,498	11990006	57820	Reserve for Salaries	\$2,498	60085001	50910	Head Treatment Pl. Op	\$49,448
	Reason:					Contractual Increase			
\$240,170.00	\$169	11990006	57820	Reserve for Salaries	\$169	60085003	51430	Longevity Pay	\$13,185
	Reason:					Contractual Increase			
\$240,170.00	\$2,838	11990006	57820	Reserve for Salaries	\$2,838	61090001	50680	General Foreman	\$53,453
	Reason:					Contractual Increase			
	\$5,505	Total			\$5,505	Total			

ORDERED: That the Communication from the Mayor re: Gift Acceptance from Partners Healthcare System, Inc. in the amount of \$750,000.00 specifically earmarked for renovation and/or replacement of a Senior Center in the City, **APPROVED**; adopted.

ORDERED: That the Marlborough City Council hereby accepts Massachusetts General Law Chapter 64L, s.2 Local Option Meals Excise which imposes a local sales tax upon the sale of restaurant meals originating within the City of Marlborough by a vendor at a rate of .75 per cent of the gross receipts of the vendor from the sale of restaurant meals. No excise shall be imposed if the sale is exempt under section 6 of chapter 64H. The vendor shall pay the local sales tax imposed under this section to the commissioner at the same time in the same manner as the sales tax due to the Commonwealth **APPROVED**; adopted.

**Councilor Elder abstained**

**Yea: 7 – Nay: 3 – Abstain: 1**

**Yea: Delano, Jenkins, Tunnera, Seymour, Landers, Pope, & Oram**

**Nay: Clancy, Ossing, & Robey**

**Abstain: Elder**

ORDERED: That a petition to the General Court, accompanied by a bill for a special law relating to the city of Marlborough to be filed with an attested copy of this order, be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

**AN ACT ESTABLISHING  
A PARKS & FIELDS CAPITAL ENHANCEMENTS SPECIAL REVENUE FUND  
IN THE CITY OF MARLBOROUGH**

**Be it enacted** by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

**SECTION 1.** Notwithstanding section fifty-three of chapter forty-four of the General Laws or any other general or special law to the contrary, the city of Marlborough shall establish in the city treasury a special revenue account to be known as the Parks & Fields Capital Enhancements Special Revenue Fund, into which shall be deposited certain receipts comprising a portion of the total local meals tax received annually by the city under section two of chapter sixty-four L of the General Laws, as provided in section 2 herein. The purpose of this act, and of the Parks & Fields Capital Enhancements Special Revenue Fund, shall be to enrich the quality of life for the residents by enhancing the parks and fields in the city of Marlborough.

**SECTION 2.** (a) Notwithstanding any general or special law to the contrary, the amount of the local option meal tax based on a rate in excess of 6.25 percent collected under said section two of said chapter sixty-four L by the city of Marlborough for the fiscal year beginning July 1, 2014 and each fiscal year thereafter shall be credited to the Parks & Fields Capital Enhancements Special Revenue Fund, and shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough. (b) Notwithstanding any general or special law to the contrary, any interest accruing on any amount on deposit in the Parks & Fields Capital Enhancements Special Revenue Fund shall be credited to the General Fund of the city of Marlborough.

**SECTION 3.** Nothing in or resulting from this act shall affect amounts distributed in any fiscal year to the city of Marlborough from the Local Aid Fund.

**SECTION 4.** If the city of Marlborough revokes, by a majority vote of the city council of the city, pursuant to section four B of chapter four of the General Laws, its acceptance of the local option meals tax rate in excess of 6.25 percent under said section two of said chapter sixty-four L, the city of Marlborough shall thereupon decide, by a two-thirds vote of the city council of the city, the separate question of whether the Parks & Fields Capital Enhancements Special Revenue Fund shall cease to have effect in the city. If two-thirds of the city council of the city votes that the Parks & Fields Capital Enhancements Special Revenue Fund shall cease to have effect in the city, all unexpended and uncommitted amounts on deposit in said Fund, as of the date of the vote to revoke the rate in excess of 6.25 percent, shall be credited to the General Fund of the city on the first day of the calendar quarter following 30 days after the date of the revocatory vote, provided, however, that if two-thirds of the city council of the city does not vote that the Parks & Fields Capital Enhancements Special Revenue Fund shall cease to have effect in the city, said Fund shall continue to have effect in the city, and all unexpended and uncommitted amounts on deposit in the fund, as of the date of the vote to revoke the rate in excess of 6.25 percent, shall be subject to further appropriation by a majority vote of the city council of the city of Marlborough.

**SECTION 5.** The city of Marlborough may amend this act by a two-thirds vote of the city council of the city of Marlborough. Such amendatory vote shall designate: (a) that the Parks & Fields Capital Enhancements Special Revenue Fund shall cease thereupon to have effect in the city of Marlborough; (b) that all unexpended and uncommitted amounts on deposit in the Parks & Fields Capital Enhancements Special Revenue Fund, as of the date of the amendatory vote, shall forthwith be credited to the General Fund of the city of Marlborough; and (c) that the portion of the total local option meals tax in excess of 6.25 percent received annually by the city of Marlborough under said section two of said chapter sixty-four L and theretofore credited to the Parks & Fields Capital Enhancements Special Revenue Fund, as set forth in section 2 herein, shall thereafter be credited to the General Fund of the city of Marlborough.

**SECTION 6.** This act shall take effect upon its passage.

**APPROVED;** adopted.

**Councilor Elder abstained**

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MOTION made by Councilor Robey to amend SECTION 2 (a) to replace "majority" with "2/3 vote" – DOES NOT CARRY BY THE FOLLOWING ROLL CALL VOTE:

**Nay: 6 – Yea: 4 – Abstain: 1**

**Nay: Delano, Jenkins, Tunnera, Seymour, Landers, & Pope**

**Yea: Clancy, Ossing, Oram & Robey**

**Abstain: Elder**

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**Yea: 6 – Nay: 4 – Abstain: 1**

**Yea: Delano, Jenkins, Tunnera, Seymour, Landers, & Pope**

**Nay: Clancy, Ossing, Oram & Robey**

**Abstain: Elder**

**DECISION ON A SPECIAL PERMIT  
CITY COUNCIL ORDER NO. 13-1005482D**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Jump In With Us, Inc. (hereinafter “Applicant Tenant”), as provided in this Decision and subject to the following Findings of Facts and Conditions:

**FINDINGS OF FACTS AND CONDITIONS**

1. The landlord is Foothills Corporation, a duly organized and existing Massachusetts corporation with its principal place of business located at 929 Boston Post Road East, Marlborough, MA 01752. Applicant Tenant is a duly organized and existing Massachusetts Corporation with its principal place of business at 85 Commons Drive, Unit 402, Shrewsbury, MA 01545 and has duly filed its Articles of Incorporation with the City Clerk of the City of Marlborough to operate his business at the subject location.
2. The landlord is the title owner of the property located at 19 Brigham Street (the “Site”). The landlord and Applicant Tenant have executed or will execute a lease regarding Unit 6 at the Site, and its use pursuant to the terms of this special permit regarding Unit 6 at the Site.
3. The Applicant Tenant seeks permission to utilize Unit 6 at the Site as a commercial indoor recreation establishment and place of amusement.
4. The Applicant Tenant, on June 27, 2013, filed with the City Clerk of the City of Marlborough, an Application for a Special Permit under the provisions of § 650-17 and pursuant to the procedures specified in § 650-59 of the Marlborough Zoning Ordinance (the “Application”).

5. The Site contains an existing commercial building. Unit 6 is shown in that building on plans submitted with or subsequent to the Application, the first said plan entitled "Overall Building Plan," and the second plan being a sketch floor plan entitled "19 Brigham St. Unit # 6" (collectively, the "Plans"), both of which Plans are attached hereto. No modifications are proposed to the exterior of the building, no structural modifications are proposed to the interior of the building, and no parking areas will be created or modified.
6. The Applicant Tenant seeks a special permit allowing the establishment of an indoor recreation area that will include various children's entertainment features for birthday parties and other special occasions, and for children who, accompanied by an adult, can take advantage of these same play features.
7. The Plans have been certified by the Building Inspector, acting on behalf of the City Planner, as having complied with Rule 7 of the Rules and Regulations promulgated by the City Council for the issuance of a special permit.
8. Pursuant to the Rules and Regulations of the City Council and the provisions of M.G.L. c. 40A, the City Council established a date for public hearing for the Application and the City Clerk caused to be advertised said date in the MetroWest Daily News and sent written notice of said hearing to those abutters entitled to notice under law.
9. The Marlborough City Council pursuant to M.G.L. c. 40A held a public hearing on October 21, 2013, concerning the Application. The hearing was opened and closed at that meeting.
10. The Applicant presented evidence at the public hearing detailing the proposed use and its limited impact upon City services, the neighborhood and traffic.
11. At the public hearing, Thomaz DeMoura, representing Luiza DeMoura who will be managing the operation of the business and is the Applicant Tenant, described the proposed business as being one that would provide an indoor venue for children's birthday parties and for children who, accompanied by an adult, can take advantage of the proposed indoor play facilities. He indicated that the business would not include a child care component, and that all children using the facility would need to be accompanied by an adult to provide supervision. In response to questions from city councilors, he indicated that:
  - a) the parties would be scheduled for weekdays and weekends;
  - b) no food would be prepared on the premises;
  - c) the facility would be open to the general public to provide indoor play space for children on a daily basis; and
  - d) all recreation would occur indoors.
12. No member of the public spoke, either in favor or in opposition to the proposal.
13. Following the public hearing, the Urban Affairs Committee held a meeting on November 13, 2013 during which this Application was discussed. At that meeting, the parties discussed various issues and proposed permit conditions to deal with them.

**REASONS FOR APPROVAL OF APPLICATION FOR SPECIAL PERMIT**

- A. The City Council finds that the Applicant Tenant has complied with all Rules and Regulations promulgated by the Marlborough City Council for an application as they pertain to the Special Permit.
- B. The use of Unit 6 for an indoor recreation establishment and place of amusement is an appropriate use of the Unit 6-portion of the Site and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough, subject to appropriate terms and conditions provided for herein. The use sought and its impacts and characteristics are not in conflict with the public health, safety, convenience and welfare, provided the safeguards and limitations imposed herein are met.
- C. The City Council, pursuant to its authority under M.G.L. c. 40A, § 9 and Chapter 650 of the Marlborough City Code, GRANTS the Applicant Tenant, its successors and assigns, a Special Permit to operate an indoor recreation establishment and place of amusement as per plans filed with the City Council and the City Clerk, SUBJECT TO THE FOLLOWING CONDITIONS, which shall be applicable to Applicant Tenant's successors and assigns, and a violation of which shall be a violation of this Special Permit:
1. Signage: Any signage installed or erected on the Site shall meet the requirements of the Sign Ordinance of the City of Marlborough, without variance.
  2. Compliance with Local, State and Federal Laws: The Applicant Tenant agrees to comply with all rules, regulations and ordinances from the City of Marlborough, the Commonwealth of Massachusetts, and Federal Government as they may apply to the construction, maintenance of equipment and operation of the facility and public peace and good order in the event that the Chief of Police determines that either the business or the applicant tenant are acting contrary to public peace and good order. The Chief shall notify the applicant in writing and deem corrective measures be put into effect in seven days. Upon the failure or inability of the applicant tenant to correct such measures, the Police Chief may require the applicant tenant to employ one or more police detail officers during such hours or days that he Police Chief in exercise of the sole discretion deemed to be necessary for the purpose of correcting the conditions.
  3. Public Peace and Good Order: Applicant Tenant shall obtain appropriate CORI information regarding all employees of Applicant Tenant, and shall keep said information available for inspection by local police upon request.
  4. Parking: No on-street parking shall be permitted on Brigham Street or any other abutting side street or public way.
  5. Hours of Operation: The hours of operation of the facility shall not be earlier than 8:00 AM or later than 8:00 PM on any day. If the Ward Councilor, Chief of Police or other Councilor has not heard of any complaints in a year's time, then the hours of operation can remain the same.

6. Limits of Use: The proposed use of the premises is to provide a place for birthday parties and other parties for children, and to otherwise provide an indoor play facility for children who are accompanied and supervised by an adult. No other kinds of public amusement shall be allowed on the premises except those ancillary to this use, including but not limited to the use of inflatable devices.
7. Food Preparation: No food shall be prepared, handled, or consumed by the public at or in Unit 6 unless and until the Applicant Tenant obtains a permit and any other approvals from the Director of the Marlborough Board of Health and pays the accompanying fees.
8. Certificate of Occupancy Required: No use of the premises will be made pursuant to this special permit unless and until a Certificate of Occupancy has been obtained from the Building Inspector regarding the change of use of the premises.
9. No Expansion of Use Area or Change in Area Configuration: Only the area of Unit 6, containing approximately 6,000 sq. ft., which has been specified in the Plans attached hereto, will be used for the proposed use. To the extent that a substantial increase in, or a change in the configuration of, the area used for this use is desired, the Building Inspector shall determine whether such increase or change constitutes a substantial change of the permitted use, and if so, no such area increase or configuration change shall be permitted unless and until this special permit has been modified by the City Council.
10. Subsequent Users: Before any successor tenant uses Unit 6 for the uses allowed in this special permit, the Director of the Marlborough Health Department shall determine in writing that any permit required of Applicant Tenant, and any other permit determined by the Director to be necessary, has been obtained.
11. Required Approval Regarding Sanitary Conditions: Prior to the beginning of operation of the business, the Director of the Marlborough Health Department shall determine in writing what, if any, special sanitary requirements are necessary in order to assure that the facility does not cause unusual health risks to those using the facility or to the public. The Director may later, in writing, amend and/or add to said requirements as he deems necessary. Such determination, and any such amendments and/or additions, shall be provided by the Director to the City Council. Any failure to comply with said sanitary requirements shall be a violation of this permit.
12. Recordation: In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant Tenant shall, at its expense, record this Special Permit with the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal hearing being filed. The Applicant Tenant shall provide a copy of the recorded Special Permit to the City Clerk, the City Solicitor, and the Building Inspector.

**Yea: 11 – Nay: 0**

**Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Robey & Oram**

Councilor Clancy recognized the two Councilors who will be departing and President Pope read and presented proclamations to Councilor Seymour and Councilor Jenkins.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 9:35 PM.